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IN THE UNITED STATES DISTRICT COURT

DISTRICT OF UTAH, CENTRAL DIVISION

UNITED STATES OF AMERICA,	:	Civil No. 2:11-cv-912-BCW
Petitioner,	:	
v.	:	UNITED STATES'
	:	PETITION TO ENFORCE
	:	INTERNAL REVENUE SUMMONS
DAVID HESTERMAN,	:	
Respondent.	:	

The United States, by and through its undersigned counsel, petitions this Court for an order to enforce an Internal Revenue Service (IRS) summons served on Respondent David Hesterman, and in support avers as follows:

I

This proceeding is brought at the request and with the authorization of the Office of Chief Counsel of the Internal Revenue Service, a delegate of the Secretary of the Treasury of the United States, and at the direction of the Attorney General of the United States.

II

This Court has jurisdiction over this proceeding pursuant to Sections 7402(b) and 7604(a) of Title 26, United States Code, and Sections 1340 and 1345 of Title 28 of the United States Code.

III

Venue is proper in the District of Utah because Respondent David Hesterman resides or may be found within this district.

IV

Maureen Thomas is a revenue officer employed by the Small Business/Self Employed Division, in the Office of the Western Compliance Area of the Internal Revenue Service at 50 South 200 East, MS 5114, Salt Lake City, Utah, 84111, and is authorized to issue IRS summons pursuant to the authority contained in Section 7602 of Title 26, United States Code, and Treasury Regulations, 26 C.F.R. § 301.7602-1 (2005).

V

Revenue Officer Thomas has prepared a declaration with respect to this matter which is attached as Attachment A and forms the basis of the allegations herein.

VI

Respondent David Hesterman is believed to reside in Salt Lake County, Utah.

VII

Petitioner is conducting an investigation into the federal tax liability of Respondent David Hesterman for the periods ending December 31, 1989, December 31, 1990, December 31, 1991, December 31, 1992, December 31, 1993, December 31, 1994, December 31, 1995, December 31, 1996, December 31, 1997, December 31, 1998, December 31, 1999, December 31, 2000, December 31, 2001, December 31, 2002, December 31, 2003, December 31, 2004, December 31, 2005, and December 31, 2006 .

VIII

Respondent is in possession and control of testimony and documents needed for the above-described investigation.

IX

On June 6, 2011, an IRS Summons (the “Summons”) was issued requiring Respondent to appear before revenue officer Maureen Thomas on July 14, 2011, at 1:00 p.m., to provide testimony and produce for examination, books, papers, records, and other data regarding the assets and liabilities of David Hesterman (Respondent). An attested copy of the Summons directed to said Respondent was served on him on June 8, 2011, by leaving a copy of the Summons at his last known place of abode, pursuant to 26 U.S.C. § 7603. A true and correct copy of the Summons is attached hereto as Attachment A, redacted only as to the details of his address.

X

On July 14, 2011, Respondent, David Hesterman, did not then appear. Subsequently, a “last chance” letter dated July 22, 2011, was sent to Respondent requiring and again requesting that he appear with his records described in the Summons. A new appearance date of August 17, 2011, was specified in that letter.

XI

On August 18, 2011, Respondent David Hesterman did finally appear before Revenue Officer Thomas with his attorney Michelle Turpin. Respondent did give some testimony, but still failed to produce his books and records as required by the Summons. The Revenue Officer

gave Respondent an extension until September 2, 2011, for Respondent to produce the required books and records.

XII

Respondent David Hesterman again failed to provide the required books and records specified in the Summons by the second extended date of September 2, 2011. Those books, papers, records and other data sought by the Summons are not already in possession of the Internal Revenue Service. Respondent's failure to produce those records and thus to fully comply with the Summons continues to the date of this Petition.

XIII

The information sought by the Summons is relevant for the legitimate purpose of the investigation described above and is not already in the possession of IRS.

XII

All administrative steps required by the Internal Revenue Code for the issuance of the Summons have been taken.

XIII

No criminal referral has been made to DOJ with respect to David Hesterman (Respondent) whose tax liability is being investigated.

WHEREFORE, Petitioner respectfully prays:

1. That the Court enter an order directing Respondent, David Hesterman, to show cause, if any, why he should not fully comply with and obey the Summons and each and every requirement thereof;

2. That the Court enter an order directing Respondent, David Hesterman, to comply with the above Summons as well as every requirement thereof by his further attendance and testimony, and production as required by the Summons before the revenue officer, or any other proper officer or employee of IRS, at such a time and place as may be fixed by the revenue officer or any other proper officer or employee of IRS;

3. That the United States recover its costs in maintaining this action; and

4. That the Court grant such other and further relief as it may deem just and proper.

Respectfully submitted this 28th day of September, 2011.

CARLIE CHRISTENSEN
United States Attorney

/s/ John K. Mangum
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Assistant United States Attorney
Attorneys for the United States of America